

5/5/8

#11

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Steven Rice)	Art Unit:	2837
Serial No.	09/814,581)	Examiner:	Hsieh, S.
Filed:	March 21, 2001)	Cust. No.	22931
For:	METHOD AND APPARATUS)	Attorney	
	FOR A DEVICE TO CREATE)	Ref. No.:	P313641
	A MUSICAL NOISE			

Sent via Private PAIR online)
Commissioner for Patents
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May 5, 2008

_____/Stephanie Brown/
Stephanie Brown

RENEWED PETITION UNDER 37 CFR 1.137(b)

Sir:

This is in response to Decision on Petition mailed this last March 5, 2008. A response is due this May 5, 2008. If any fees are required that were not submitted at the time of filing of this Response on the PAIR system, please charge them to Deposit Account No. 08-3260.

REMARKS

By way of background, the patent application became abandoned for failure to pay the issue fee. The Issue Notification was mailed May 16, 2002 and the issue fee was due August 16, 2002. Accordingly, the application became abandoned August 17, 2002.

In the last Office Action, the Examiner noted two Periods which are of issue with regard to the delay. The first Period relates to the delay in reply that originally resulted in the abandonment, and the second is the delay in filing an initial petition under 37 CFR 1.37(b) to revive the application.

With respect to Period (1), the standard for reviving an application is an unintentional standard to permit the office to have discretion to revive applications. Enclosed herewith are declarations of Steven Rice, the present inventor of the application, and Mr. Rice's nephew Jason Brewer. As you can see in Mr. Rice's sworn declaration, he suffered an injury related to his spinal cord while working in Alaska, which resulted in him consuming various prescription drugs as recited in paragraph 6 of his declaration. As to why no reply was filed, it is apparent that the delay was not a deliberate course of action, but rather what appears to be a fundamental misunderstanding by Mr. Rice.

Further enclosed here with is correspondence related to this present matter which was sent to Mr. Rice; however, as noted in his declaration, his ability to comprehend and follow through on such correspondence was impaired.

Moreover, the telling issue in this present case is that the stimulus for the realization that the patent was not issued was intervention by Jason Brewer, who made an inquiry to his uncle Steven Rice regarding the patent. Mr. Rice responded by informing Jason that his concept was patented. This conversation led to a string of events and communications between Jason Brewer and Michael Hughes, which clarified the issue that the patent had never been granted for failure to pay the issue fee.

With regard to Period (2), as noted above, the delay for not seeking or persisting in the revival of application was due to a fundamental misunderstanding by Mr. Rice. Mr. Rice was apparently not in a proper state of mind with his injury, medication, the sickness and death of his wife, and a plurality of adverse life circumstances which

prevented him from making a proper assessment of the situation relating to his patent. It was not until the intervention of his nephew Jason Brewer that Mr. Rice gained an appreciation for the situation. After it was discovered the patent was indeed abandoned, the actions to revive the patent were undertaken very quickly, involving assembling the required funds for the revival, which included steps such as acquiring the formal drawings, which was a necessary element for payment of the issue fee, and services freshly preparing the petition to revive and the actual response to the Notice of Allowance.

Therefore, as a member of Hughes Law Firm, PLLC with regard to Period (2), the revival of the application was done on an expedited basis once it was discovered and understood by the inventor that the application had gone abandoned. Our firm, working with Jason Brewer, acted expeditiously to assess the odds of a revival, by conducting research on the issue, preparing the formal drawings, and finally preparing the petition to revive and attending to the payment of the issue fee. Such preparation research included calling the PTO help line, which indicated that the present facts would likely warrant a successful unintentional petition to revive.

If there is any matter which could be expedited by consultation with the Applicant's attorney, such would be welcome. The Applicant's undersigned attorney can normally be reached at the telephone number set forth below.

Signed at Bellingham, County of Whatcom, State of Washington this May 5, 2008.

Respectfully submitted,
STEVEN RICE,

By _____/Michael Hughes/
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